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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-293

ANTHONY V. ALLESSANDRINI, a/k/a TONY ALESS,
Petitioner,

v.

AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA and ASSOCIATED MUSICIANS OF GREATER NEW YORK, LOCAL 802, AFL-CIO,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF RESPONDENT, AMERICAN FEDERATION OF MUSICIANS, IN OPPOSITION

VAN ARKEL AND KAISER
HENRY KAISER
RONALD ROSENBERG
1828 L Street, N. W.
Washington, D. C. 20036

VLADECK, ELIAS, VLADECK AND LEWIS
STEPHEN C. VLADECK
JUDITH P. VLADECK
1501 Broadway
New York, N. Y. 10036

ASHE AND RIFKIN
DAVID ASHE
253 Broadway
New York, N. Y. 10007

Attorneys for Respondents

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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OPINIONS BELOW

The opinion of the Court of Appeals for which review is sought is printed in the Appendix to the Petition (pp. 1a-2a). The opinion and judgment of the District Court for the Southern District of New York is also set forth in the Appendix to the Petition (pp. 3a-7a).

The prior Decision and Order of the District Court for the Southern District of New York in *Allessandrini, a/k/a Tony Aless* v. *Columbia Broadcasting System,* 66 Civ. 1708 (unreported) on the basis of which the instant action was dismissed, is set forth in the Appendix in the Court of Appeals. A-61-74.

QUESTIONS PRESENTED

Petitioner's statement of the questions presented to the Court obscures rather than clearly states the issues. The questions presented are the following:

1. Did the Court below correctly affirm the dismissal of the complaint, having found that under the doctrine of collateral estoppel the claim was barred by a prior decision?

2. Did the Court below correctly refuse to permit a charge of breach of the duty of fair representation to overcome the bar of the arbitration award and the prior litigation?

STATUTORY PROVISIONS INVOLVED

Petitioner refers to Section 101(a)(4), Labor-Management Reporting and Disclosure Act of 1959. The provision was not cited by Petitioner in the Court below, although it was referred to in the complaint. Neither that section or any other statutory provision is relevant to any issue raised herein.

FACTS

The facts are accurately set forth in the opinion of the Court of Appeals (A. 2a),* and at length in the opinion of the District Court (A. 3a-5a).

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* References, unless otherwise noted, are to Appendix to Petition.

ARGUMENT

Since there is no conflict concerning the law applicable to this case, and since the decision of the Court of Appeals is correct, there is no reason for further review.

Petitioner views this case as a vehicle for obtaining from the Court a restatement of the law of collateral estoppel. Even if such restatement was timely, this case does not provide a basis for reexamining the law. The decision below rests entirely on the facts and cannot affect other litigants.

1. The doctrine of collateral estoppel, contrary to Petitioner's statement, was not applied by the Court below in other than its traditional fashion, that of foreclosing repeated litigation of the same issue. Even in *Lawlor* v. *National Screen Service Corp.*, 349 U.S. 322, relied on by Petitioner, the doctrine of collateral estoppel was held sufficient to prevent "relitigation of the issues actually litigated and determined in a prior suit, regardless of whether it was based on the same cause of action as the second suit" (at p. 326).

2. Petitioner's reference to the developing law of unfair representation does not affect the application of the bar of collateral estoppel. The Court below correctly held that Petitioner was seeking "to relitigate, by charge of breach of fiduciary relationship, the very issue of the validity of the award which Judge Tyler had decided adversely against him" (Opinion, Court of Appeals, A. 2a).

The introduction of the argument concerning the duty of fair representation was an effort to attack collaterally an arbitration award which Petitioner had never sought to set aside and which had been held,

in the first suit, to be binding upon him. All applicable law supports the decision of the Court of Appeals in affirming the District Court's finding that the decision of Judge Tyler in the first action precluded further litigation upon the same facts and the same issues.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

VAN ARKEL AND KAISER
HENRY KAISER.
RONALD ROSENBERG
1828 L Street, N. W.
Washington, D. C. 20036

VLADECK, ELIAS, VLADECK AND LEWIS
STEPHEN C. VLADECK
JUDITH P. VLADECK
1501 Broadway
New York, N. Y. 10036

ASHE AND RIFKIN
DAVID ASHE
253 Broadway
New York, N. Y. 10007

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